

WT 95-178

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Jim Edgar, Governor

Howard A. Peters III, Secretary

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June 30, 1998

Secretary Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
1919 M. Street N.W.
Washington, D.C. 20554

Dear Secretary Salas:

The Illinois Department of Human Services (IDHS) is submitting comments on the Federal Communications Commission's Notice of Proposed Rulemaking (NPRM) interpreting the provisions of Section 255 of the Telecommunications Act of 1996. It is understood that these provisions create historic access requirements.

IDHS is a state human service agency that serves persons with disabilities, among other populations, in an effort to maximize independence and self sufficiency within communities. Access to telecommunications is vitally important to full participation in society.

IDHS offers the following comments in response to NPRM on Section 255:

- 1) IDHS recommends that the FCC adopt the Access Board guidelines with respect to equipment accessibility (Part 1193 of Title 36 of the Code of Federal Regulations effective March 5, 1998). The Access Board used a lengthy, consultative process with industry leaders and the disability community. Without FCC adoption, the Access Board guidelines will be regarded as advisory.
- 2) IDHS recommends re-evaluation of the FCC's proposed criteria included in the definition of "readily achievable." The NPRM adds new factors for consideration under the definition of "readily achievable" not widely used under the ADA (i.e. opportunity costs, timing and cost recovery). Any criteria should minimize any loopholes for manufacturers and suppliers to develop inaccessible products. It is recommended that the FCC should develop guidelines on excessive costs that include documentation by manufacturers. In addition, the FCC should require specific consultation with accessibility technical experts early in the development process prior to determining that accessibility is not feasible. In determining resources, parent entities need to be included when considering

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assets and revenues that may be available to a telecommunications subsidiary. Costs of equipment tend to decline with greater use and availability, therefore cost recovery should be spread across the total overhead of product life cycles. Retrofit should not be considered except in future equipment that is not accessible if the FCC determines it could have been made accessible. We agree with the Access Board and Trace that no "grace period should be allowed". We think that "other considerations" as criteria in determining "readily achievable" should be excluded.

- 3) IDHS encourages the FCC to re-examine its approach to telecommunication services. It was determined that certain services are viewed as "enhanced" rather than "basic" (i.e. voice mail and electronic mail) and therefore are not covered by Section 255. These interpretations are based on precedents, however, an increasing number of telecommunication innovations have begun to make these functions basic to the American public by the telecommunications industry. We believe it was the intent of Congress to allow for new forms of telecommunication services to be accessible to persons with disabilities.
- 4) IDHS does not support affordability being considered as a factor in determining "commonly used" devices to obtain compatibility for people with disabilities. FCC's reference to devices included in state equipment distribution programs is unclear. These criteria are arbitrary and would only become another barrier to achieving compatibility with assistive technology. FCC should maintain a clearinghouse of devices to guide the industry regardless of whether the devices are available under a state distribution program or the cost of the devices. This information should be included on the Commission's Disabilities Issues Task Force Web Site. The criteria for determining compatibility listed on Page 44 is a starting point, however, continual monitoring is needed as new technology develops.
- 5) IDHS recommends that the FCC monitor efforts to ensure accessibility is addressed within the telecommunications industry. This includes monitoring the complaint process as proposed to ensure timely results and accessibility are achieved. Any use of fines and or sanctions should be formalized to ensure manufacturers take seriously considerations of accessibility in product design.
- 6) In terms of manufacturer coverage under Section 255, IDHS agrees that "provider" should be broadly used to cover both entities that supply or furnish telecommunications equipment and services. We affirm that all companies that market their products in the U.S. must conform to accessibility requirements. Many devices are produced in other countries that may continue to pose barriers to access. We support that the FCC should follow the Access Board's "final assembler" approach in terms of enforcement.

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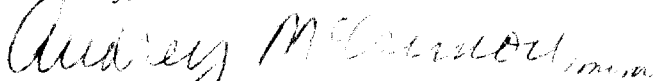
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Distributors should also be included as "manufacturers" to prevent the sale of inaccessible devices thereby creating unfair competition.

- 7) In terms of equipment coverage, IDHS agrees that all telecommunication equipment and customer premises equipment (CPE) should be covered by accessibility requirements. We support that software is covered by Section 255, however, IDHS disagrees that software that is marketed separately from CPE's is not subject to Section 255. All software should be covered and made accessible as it is used as a telecommunications device.
- 8) The FCC is correct in including telecommunications services in accessibility requirements. Any customer service should include TTY access and Internet websites as well as other instructional information should be accessible.
- 9) In terms of the complaint process, we agree with Telecommunications Access Advisory Committee (TAAC) that the use of informal handling of complaints on a "fast track" is a streamlined approach. IDHS urges the FCC to use a single point of contact with manufacturers to address complaints allowing appropriate people to be involved that does not require a consumer to search for the right contact. A request for a formal complaint should be available anytime during the process. There should be a provision to waive the filing fee given many people affected may have limited incomes. We support employing an alternative dispute resolution process which should be available at anytime that a party requests it and not time limited. The FCC should prescribe a method of selecting neutral parties to be involved in the resolution process. Consultation with experts and the disability community is important. The TAAC recommendation that the FCC refer inquiries and complaints to a panel is preferred.
- 10) Finally, as a part of Americans with Disabilities Act implementation, the enforcing entities committed funds to establishing grants with disability organizations and industry providers to disseminate information about the law's coverage. We encourage the FCC to consider similar strategies to inform customers and manufacturers about the provisions of Section 255 in order to ensure compliance.

We thank you for this opportunity to comment on proposed rulemaking under Section 255. We look forward to FCC implementation of these historic provisions.

Sincerely,



Audrey McCrimmon
Assistant Secretary

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